

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK, NATIONAL ASSOCIATION, in its
capacity as Trustee, JOSHUA N. TERRY, AND
ACIS CAPITAL MANAGEMENT, L.P.,

Plaintiffs,

-against-

THE CHARITABLE DONOR ADVISED FUND,
L.P., CLO HOLDCO LTD., AND NEXPOINT
DIVERSIFIED REAL ESTATE TRUST,

Defendants.

**Case No. 1:21-cv-11059
(GHW)**

**NOTICE OF MOTION
TO DISMISS**

PLEASE TAKE NOTICE that upon the annexed Declaration of Jason C. Hegt, dated May 31, 2023, and the accompanying Memorandum of Law, the undersigned hereby moves this Court on behalf of Counter-Defendant Brigade Capital Management, LP (“Brigade”) before the Honorable Gregory H. Woods of the United States District Court for the Southern District of New York, in Courtroom 12C of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, 10007, for an order granting Counter-Defendant’s Motion to Dismiss the Counterclaims of Defendant NexPoint Diversified Real Estate Trust against Brigade, ECF No. 78, pursuant to Fed. R. Civ. Pro. 12(b)(6).

Dated: May 31, 2023
New York, New York

Respectfully submitted,

/s/ Jason C. Hegt.
LATHAM & WATKINS LLP
Jason C. Hegt
Alexis Kellert Godfrey
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Jason.Hegt@lw.com
Alexis.Godfrey@lw.com

*Attorneys for Counter-Defendant Brigade
Capital Management, LP*